

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 01-618-01
	:	
v.	:	
	:	
GREGORY MARTIN	:	CIVIL NO. 06-cv-5140

MEMORANDUM

BUCKWALTER, J.

April 12, 2007

I.

The background of this case, accurately set forth in the government's brief, is that on October 11, 2001, a federal grand jury returned an indictment against Gregory Martin, and another defendant, charging him with conspiracy to commit bank robbery, in violation of 18 U.S.C. § 371 (Count One), three counts of armed bank robbery, in violation of 18 U.S.C. § 2113(d) (Counts Two, Four, and Six), and three counts of using a firearm during a violent crime, in violation of 18 U.S.C. § 924(c) (Counts Three, Five and Seven).

On January 14, 2003, Martin pled guilty to all counts of the indictment against him except Count Five, which was dismissed by the government at sentencing.

On May 2, 2003, this Court sentenced Martin to 30 months imprisonment on Counts One, Two, Three, Four, and Six, and 130 months on Count Seven, all terms to run consecutively, for a total of 280 months imprisonment. This Court also sentenced Martin to a 5 year term of supervised release, a \$600 special assessment, and \$201,934.00 restitution. The Court granted the government's motion for downward departure when entering this sentence. The judgment was entered on the docket on May 5, 2003.

On March 29, 2004, Martin filed a notice of appeal. The appeal was docketed at No. 04-1897. The Third Circuit sent a letter to Martin on April 1, 2004, advising him that it could not accept his Notice of Appeal filed out of time, and that “[o]nly the District Court may [extend the time to file a notice of appeal] . . . in the manner provided by Rule 4, Fed. R. App. P.,. Alternatively, it is possible that your submission might be construed as a motion under 28 U.S.C. § 2255, but once again that is a matter entirely within the purview of the District Court.”

Martin then filed a motion in the Third Circuit requesting that his counsel be disqualified due to a conflict of interest. His counsel, Roland Jarvis, Esq., apparently also filed a motion to withdraw from his court-appointed representation. Both motions were denied, Jarvis’ motion on April 28, 2004, and Martin’s motion on May 21, 2004. There is no indication in the District Court docket that Martin filed any motion with the District Court requesting that his right to appeal be reinstated.

On September 29, 2004, the Third Circuit dismissed Martin’s appeal as untimely, ordering that the appeal was dismissed without prejudice to the filing of a motion to vacate the sentence pursuant to 28 U.S.C. § 2255. Martin filed nothing in the District Court until November 21, 2006, when he filed a motion to vacate or set aside or correct his sentence pursuant to 28 U.S.C. § 2255.

II.

Based upon the background in this case, Martin had one year from the date in which his judgment became final. The applicable part of 28 U.S.C. § 2255 reads as follows:

A 1-year period of limitation shall apply to a motion under this section.
The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction becomes final.

Giving Martin the most leeway with regard to the time limit set forth above, he would have had to file his § 2255 motion on or before December 27, 2005, assuming his judgment of conviction did not become final until December 27, 2004, ninety (90) days after the appeal was dismissed by the Court of Appeals on September 29, 2004.

Having not filed his § 2255 motion until November 21, 2006, it is time barred and will be dismissed. An order follows.

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ORDER

AND NOW, this 12th day of April, 2007, it is hereby ORDERED that the motion to vacate (Docket No. 91) is DISMISSED.

No certificate of appealability will issue since petitioner has failed to make a substantial showing of the denial of any constitutional right.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.
RONALD L. BUCKWALTER, S.J.